85-1350

No. ____

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

In the

Supreme Court of the United States

October Term, 1985

Billy Joe Edgemon, *Petitioner*

V.

A.L. Lockhart, Director,
Arkansas Department of Correction, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Hot Springs, Arkansas 71901
(501) 623-2565

Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether a United States Court of Appeals and a United States District Court in a Habeas Corpus proceeding in which the detention complained of arises out of process issued by a State Court must state the reasons why an application for Certificate of Probable Cause should not issue.

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No. ____

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LIST OF PARTIES

The Petitioner is Billy Joe Edgemon and the Respondent is A.L. Lockhart, Director, Arkansas Department of Correction.

OPINIONS ISSUED BELOW

There are no opinions issued below pertaining to the issue raised in this Appeal.

JURISDICTION

The judgment of the Court of Appeals was entered on November 6, 1985. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

RULE INVOLVED

This case involves the second section of Rule 22 of the *Federal Rules of Appellate Procedure*, which provides as follows:

> "In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of probable cause. If an appeal is taken by the Applicant, the district judge who rendered the judgment shall either issue a certificate of probable cause or state the reasons why such a certificate shall not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a state or its representative, a certificate of probable cause is not required."

STATEMENT OF MATERIAL FACTS

The Petitioner filed a Petition for Writ of Habeas Corpus on April 13, 1984, and an Evidentiary Hearing was eventually held on September 4, 1985, in the United States District Court of the Eastern District of Arkansas. The Petitioner's Petition was denied on September 20, 1985, and the Order was entered on the Docket Sheet on September 23, 1985. The Petitioner then applied for a Certificate of Probable Cause and filed his Notice of Appeal on October 21, 1985. On October 22, 1985, the District Court entered an Order denying the Petitioner's application for Certificate of Probable Cause. On November 6, 1985, the United States Court of Appeals for the Eighth Circuit denied the Petitioner's application for Certificate of Probable Cause. Neither Court gave any reasons for the denial of the application. The Petitioner then filed a Motion for Reconsideration of the denial of the application for Certificate of Probable Cause in the United States Court of Appeals for the Eighth Circuit on November 28, 1985, but this Motion was denied on December 12, 1985. The Petitioner also filed a Motion for Reconsideration of his application for Certificate of Probable Cause in the District Court on December 11, 1985, but this too was denied by the District Court on the following day, December 12, 1985.

BASIS FOR FEDERAL JURISDICTION

The Petitioner was convicted on April 1, 1981, in the State of Arkansas for murder in the first degree, and he was sentenced to life imprisonment, and fined $10,000.00. The Petitioner thereafter appealed to the Arkansas Supreme Court, but his conviction was affirmed on March 15, 1982. Before filing the Petition for Writ of Habeas Corpus in the Federal District Court, the Petitioner had exhausted all of his possible remedies of relief under the laws of the State of Arkansas.

The District Court had jurisdiction to hear his Petition for Writ of Habeas Corpus under *28 U.S.C. Section 2254.*

After an Evidentiary Hearing was held in the District Court concerning the allegations raised in the Petitioner's Petition for Writ of habeas Corpus, the District Court denied the Petitioner's Petition. The Petitioner then timely filed his Notice of Appeal to the United States Court of Appeals for the Eighth Circuit. The Petitioner also made application to the District Court for a Certificate of Probable Cause at the same time his Notice of Appeal was filed. The District Court then denied the Petitioner's application for Certificate of Probable Cause. The United States Court of Appeals for the Eighth Circuit later denied the application. The Petitioner filed a Motion for Reconsideration in both the District Court and in the Appellate Court, but these Motions were denied by both the District Court and the Court of Appeals.

This Court has jurisdiction to hear this matter under *28 U.S.C. Section 1254(1).*

REASONS FOR GRANTING THE WRIT

The issue in this case is whether the Courts of the United States are bound by their own rules. The Petitioner is currently living out the rest of the days of his life in a state penitentiary and has no hope of getting out because of United States District Court and a United States Court of Appeals refusal to comply with Rule 22(b) of the *Federal Rules of Appellate Procedure.*

The facts of this case are simple:

The Petitioner was convicted of murder in the State of Arkansas. He appealed his conviction to the Supreme Court of Arkansas, but his conviction was affirmed. After exhausting all possible remedies of relief under the laws of Arkansas, he filed a Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Arkansas.

An Evidentiary Hearing was held by the District Court on September 4, 1985. Petitioner's Petition was denied. The Petitioner then timely filed his Notice of Appeal, and an application for Certificate of Probable Cause on October 21, 1985. A day after his application was filed, the District Court entered an Order denying the Petitioner's application. The Order simply read:

> "Petitioner's application for certificate of probable cause is denied"

No reasons were given as to why such a certificate should not be issued.

On November 26, 1985, the United States Court of Appeals for the Eighth Circuit entered an Order denying the Petitioner's application for Certificate of Probable Cause. The Eighth Circuit, in it's denial, merely stated:

> "Application for certificate of probable cause has been considered by the Court, together with the original file of the United States District Court in Case No. PB C 84-185. Being fully advised in the premises, it is ordered by the Court that application be, and it is hereby, denied."

Again, no reasons were given by the Court as to why such a certificate should not issue.

Rule 22(b) of the *Federal Rules of Appellate Procedure* clearly states that "the district judge who rendered the judgment shall either issue a certificate of probable cause or state the reasons why such a certificate shall not issue." Neither the District Court, nor the Eighth Circuit has stated the reasons for such a denial, despite a Motion for Reconsideration that was filed in both of the Courts by the Petitioner.

If the Courts are not going to abide by their rules, one might ask what the purpose of the rules are. It cannot be argued that the Petitioner has not been prejudiced by the failure of the Courts to abide by this "technicality", as the granting of the application was the Petitioner's last chance for ever regaining his liberty, despite the fact that his Constitutional rights were violated on the state level.

CONCLUSION

WHEREFORE, Petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the judgment of the United States Court of Appeals for the Eighth Circuit. Oral argument is respectfully requested.

Respectfully submitted,

Q. BYRUM HURST, JR.
201 Woodbine
Hot Springs, Arkansas 71901
(501) 623-2565

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Q. BYRUM HURST, JR., do hereby certify that I have served a copy of the foregoing On Writ of Certiorari on the opposing counsel by placing same in the United States Mail, postage prepaid, addressed to: THEODORE HOLDER, Assistant Attorney General, 201 East Markham, Heritage West Building, Little Rock, Arkansas 72201, this 4th day of February, 1986.

/s/ Q. BYRUM HURST, JR.

APPENDIX "A"

RULE INVOLVED

Rule 22(b) of the Federal Rules of Appellate Procedure

"(b) *Necessity of Certificate of Probable Cause of Appeal.* In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate or probable cause. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of probable cause or state the reasons why such a certificate shall not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a state or its representative, a certificate of probable cause is not issued."

APPENDIX "B"

JUDGMENTS OF THE LOWER COURTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION
(Filed Oct. 22, 1985)

BILLY JOE EDGEMON, PETITIONER,

vs. PB C 84 185

A.L. LOCKHART, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION, RESPONDENT.

ORDER

Petitioner's application for certificate of probable cause is denied.

DATED this 21st day of October, 1985.

AT THE DIRECTION OF THE COURT

CARL R. BRENTS, CLERK

BY /s/ Suzanne L. Thompson
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 85-2299EA.

Billy Joe Edgemon,	*	
	*	
Appellant,	*	
	*	
vs.	*	Appeal from the United
	*	States District Court for the
A.L. Lockhart, etc.,	*	Eastern District of Arkansas
	*	
Appellee.	*	

Application for certificate of probable cause has been considered by the Court, together with the original file of the United States District Court in case No. PB C 84-185. Being fully advised in the premises, it is ordered by the Court that application be, and it is hereby, denied.

November 6, 1985

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION
(Filed Dec. 12, 1985)

BILLY JOE EDGEMON, PETITIONER,

vs. PB C 84 185

A.L. LOCKHART, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION, RESPONDENT.

ORDER

Petitioner's motion for reconsideration of the previous denial of certificate of probable cause is DENIED.

DATED this 12th day of December, 1985.

AT THE DIRECTION OF THE COURT

CARL R. BRENTS, CLERK

By /s/ Suzanne L. Thompson
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 85-2299EA.

Billy Joe Edgemon,	*	
	*	
Appellant,	*	
	*	
vs.	*	Appeal from the United
	*	States District Court for the
A.L. Lockhart, etc.,	*	Eastern District of Arkansas
	*	
Appellee.	*	

Appellant's motion for reconsideration has been considered by the Court and is hereby denied.

December 12, 1985